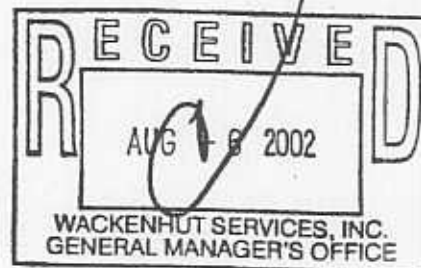


United States Government

Department of Energy  
National Nuclear Security Administration

# memorandum

DATE: August 2, 2002  
REPLY TO:  
ATTN OF: NADP-6: WWWistrom



SUBJECT: CONTRACT DE-AC05-02OR22928 WITH WACKENHUT SERVICES, INC.

TO: Donat St.Pierre, NADP-6

Pursuant to DOE Order O 541.1A, Appointment of Contracting Officers and Contracting Officer Representatives, and in accordance with the Technical Direction clause contained in the subject contract, you are hereby designated to act as the Contracting Officer's Representative (COR) in relation to the supplies and/or services to be provided under the subject contract.

The responsibilities of the COR grow out of the provisions of the contract and DOE Order O 542.1. You must, therefore, thoroughly familiarize yourself with all of the requirements of the contract and your responsibilities relative to these requirements. As applicable to the subject contract, your duties will consist of the following:

- A. **Monitor Contract Compliance.** Ensure that the Contractor complies with all technical requirements of the work defined in the scope of work, including reports, documentation, data, work products, milestone schedules, and deliverables. In this connection, you should:
1. Inform the Contracting Officer/Contract Specialist (CO/CS) in writing of any performance failure by the Contractor.
  2. Inform the CO/CS if you foresee that the contract will not be completed according to schedule. Your written notice should include your recommendations for resolving the schedule problem.
  3. Ensure that the government meets its contractual obligations to the Contractor. This includes, but is not limited to, furnishing any government property and services

specified in the contract, and providing timely Government comment on or approval of draft contract deliverables as may be required by the contract.

4. Inform the CO/CS in writing of any necessary changes to the contract, as applicable, giving a full explanation of the proposed changes. A written request must be processed through the CO to effect any changes in the scope of work, task order, reporting requirements, or any other part of the contract. If the Contractor proposes a change, you are to obtain a written statement to that effect and forward that statement along with your recommendations to the CO/CS. Your request should include the estimated cost of any proposed increase or decrease in the scope of work and the availability of funds. You should ensure that changes in the scope of work, including delivery schedule, are issued by written contract modification by the CO before the Contractor proceeds with the changes.
5. Issue technical direction within the limitations set forth in this designation and in accordance with the Technical Direction clause of the contract. Such technical direction should be in writing. A copy of all technical direction sent to the Contractor will be provided to the CO/CS.

Technical direction includes authority to suspend work for environmental, safety, and health noncompliance reasons when a clear and present danger exists to workers, members of the public, or the environment. Clear and present danger is a condition or hazard which could reasonably be expected to cause death or serious harm to workers, members of the public, or the environment immediately or before such condition or hazard can be eliminated through normal procedures. The COR may redelegate in writing the authority to suspend work for clear and present danger conditions or hazards to others as appropriate, provided the reasons for such suspensions and other appropriate information are immediately communicated to the COR.

6. Assist the Contractor in interpreting the technical requirements of the contract. Immediately report to the CO/CS in writing all technical issues that cannot be resolved without increasing costs or changing the contract. Also immediately report in writing any issues that cannot be

mutually agreed to so that the CO/CS can take action to resolve the issues. Such reports must include the facts pertinent to the issues and the recommended action.

7. Inspect and accept all deliverables within the scope of the contract. Review contract deliverables for unauthorized work.
8. Inform the CO/CS, in writing, of the need to exercise the contract option, if any, for additional time and/or quantities of units acquired. In accordance with FAR 52.217-9, the CO/CS must give the Contractor a preliminary written notice of intent to extend at least 60 days before the contract expires. Your written request must be provided to the CO/CS before the Contractor can be notified.
9. Ensure that requirements and policies of FAR 37.104, Personal Services Contracts, are adhered to and that no employer-employee relationship between Government and Contractor employees is created. [Note: The DOE Acquisition Guide, Part 37, provides guidance on support service contracting, a copy of which is available from the CO/CS.]
10. Inform the CO/CS of any potential or evidence of organizational conflict of interest (OCI) problems. [OCI means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.]

**B. Monitor Administrative and Funds Aspects of Contract.**

1. Notify the CO/CS immediately of any indication that the cost to the government for completing performance under the contract will exceed the amount stated in the contract.
2. Report any indication that costs are being incurred which are not appropriately chargeable to the contract.
3. Monitor travel under the contract to assure the necessity, number of travelers, and duration are appropriate.

4. Review and certify Contractor's periodic vouchers or invoices for payments in relation to the contract and progress reports to determine whether work accomplished is commensurate to payment requested. Questionable costs should be reported promptly to the CO/CS for appropriate resolution.

**C. Property Management (as applicable).**

1. Review and comment on the Contractor's request for government-furnished facilities, supplies, materials, and equipment and forward the request to the CO/CS for disposition.
2. Review and comment on the Contractor's request for consent to the purchase of supplies, materials, and equipment, and forward the request to the CO/CS for disposition.
3. Review and comment on the Contractor's lease-purchase analysis or make-buy decisions.
4. Review and comment on the Contractor's submitted property management reports.

**D. Assist in Close-out of Contract.**

1. Forward a written statement to the CO/CS attesting to the Contractor's completion of technical performance, delivery, and acceptance of all goods and services for which inspection and acceptance are delegated.
2. In accordance with DOE and Y-12 Site Office policies and procedures existing upon close-out, provide any required close-out information to the CO/CS; and make disposition of all records and documents pertinent to the administration of the contract which you retained in your capacity as COR during the period of performance.

**E. Security.** Because the contract requires access to classified information and/or clearance for entry to a limited area, you should ensure that:

1. All Contractor (prime and subcontractor) clearance requests are submitted in a timely manner through you to the



Albuquerque Operations Office.

2. All DOE security requirements are met as may be specified by security regulations and procedures or the Y-12 Site Office Safeguards and Security Division.

As a matter of practice, the COR should prepare a written record of meetings, trips, and telephone conversations relating to the contract. Each record and all correspondence relating to the contract should cite the contract number. It is requested that a copy of records or correspondence that you generate or receive relating to the contract be furnished to the CO/CS and all other interested parties having a need to know. The utmost care must be given to restrictions regarding proprietary data, as well classified and business-sensitive information.

In performing these responsibilities, you are not authorized to redelegate any COR responsibility to others **except as provided in Item A.5, above**; or negotiate terms or make any agreements or commitments with the Contractor which involve a change in the scope, price/cost, terms, or conditions of the contract. Only the CO is authorized to modify any term or condition of the contract, waive any requirement of the contract, or approve the payment of vouchers.

Please acknowledge acceptance of the COR designation and return one copy to me.



William Wistrom  
Contracting Officer

cc:

Lynn Calvert, Wackenhut Services, Inc.  
Acquisition Services Branch, AD-424

ACCEPTANCE OF COR DESIGNATION:



Signature



**NATIONAL NUCLEAR SECURITY  
ADMINISTRATION (NNSA)**

**Y-12 SITE OFFICE**

**CONTRACT  
DE-AC05-02OR22928**

**EFFECTIVE DATE  
JULY 10, 2002**

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING	PAGE OF	PAGE	
CONTRACT (Proc. Inst. Ident.) NO. E-AC05-02OR22928		3. EFFECTIVE DATE 07/10/02		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 05-02OR22928.000		1125	
ISSUED BY  Department of Energy National Nuclear Security Administration O. Box 2001 Oak Ridge, TN 37831		CODE	6. ADMINISTERED BY (If other than Item 5)		CODE		
NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code) Wackenhut Services, Inc. 162 Mitchell Road Oak Ridge, TN 37830				8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)			
				9. DISCOUNT FOR PROMPT PAYMENT			
CODE				FACILITY CODE		ITEM	
11. SHIP TO/MARK FOR		CODE	12. PAYMENT WILL BE MADE BY		CODE		
			Oak Ridge Financial Service Center, Department of Energy				
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 USC 2304(c) ( ) <input type="checkbox"/> 41 USC 253(c) ( )				14. ACCOUNTING AND APPROPRIATION DATA See Attached Page			
15A. ITEM NO.	15B. SUPPLIES/SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT	
15G. TOTAL AMOUNT OF CONTRACT						\$	
16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	SOLICITATION/CONTRACT FORM	1	X	I	CONTRACT CLAUSES	47
X	B	SUPPLIES OR SERVICES AND PRICES/COST	1	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
X	C	DESCRIPTION/SPECS./WORK STATEMENT	23	X	J	LIST OF ATTACHMENTS	125
X	D	PACKAGING AND MARKING	25	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	INSPECTION AND ACCEPTANCE	27		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
X	F	DELIVERIES OR PERFORMANCE	29		L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
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X	H	SPECIAL CONTRACT REQUIREMENTS	35				
CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE							
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input checked="" type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or print) LYNN ALBERT				20A. NAME OF CONTRACTING OFFICER William D. Brumley Contracting Officer			
19B. NAME OF CONTRACTOR BY [Signature]		19C. DATE SIGNED July 10, 2002		20B. UNITED STATES OF AMERICA BY [Signature] (Signature of Contracting Officer)		20C. DATE SIGNED 7/10/02	
NSN 7540-01-152-8069 PREVIOUS EDITION UNUSABLE							
Form designed using PerForm Pro software.							
STANDARD FORM 26 (REV. 4-85) Prescribed by GSA FAR (48 CFR) 53.214(a)							

## Attachment to SF 26

Fund Type	B&R	Amount	Task Number
FS	FS2001100	\$ 3,616,748.00	
FS	FS2001200	494,952.00	
FS	FS2001400	105,900.00	
FS	FS2001500	57,000.00	
FS	FS2002100	172,000.00	
		<u>\$ 4,446,600.00</u>	
TC	FS2001100	\$ 3,452,861.00	
TC	FS2001200	912,054.00	
TC	FS2001400	297,256.00	
TC	FS2001500	115,997.00	
TC	FS2002100	116,208.00	
TC	FS2004100	61,079.00	
TC	FS2004400	125,176.00	
TC	FS2004500	102,005.00	
TC	FS2005200	995,382.00	
TC	FS2006100	46,440.00	
TC	FS2006200	7,857.00	
		<u>\$ 6,232,315.00</u>	
TC	820201000	\$ 33,751.00	TSKOR22928NSPO
TC	820201000	\$ 54,401.00	TSKOR22928NMCA
TC	820201000	\$ 20,982.00	TSKOR22928FILE
TC	820201000	\$ 2,703.00	TSKOR22928IAEA
		<u>\$ 111,837.00</u>	

TOTAL THIS PR \$ 10,790,752.00

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## **PART I - THE SCHEDULE**

### **SECTION B**

#### **SUPPLIES OR SERVICES AND PRICES/COSTS**

##### **B.1 ORO B01 ITEMS BEING ACQUIRED (NOV 1998)**

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance and providing the following items of work:

Item 1 - See Section J, Attachment A, Statement of Work

Item 2 - Reports in accordance with Section J, Attachment B, "Reporting Requirements Checklist", Form DOE F 1332.1, and the clause entitled "Uniform Reporting System."

[End of Clause]

##### **B.2 ORO B05 LEVEL OF EFFORT (TIME & MATERIAL AND LABOR HOUR) ALTERNATE I (NOV 1998)**

- (a) The Contractor shall provide the estimated total Direct Productive Labor-Hours (DPLH) as specified in ORO B13, Price Schedule (Time and Material and Labor Hour). DPLH are defined as actual hours worked exclusive of vacation, holiday, sick leave and other advances; DPLH include subcontract hours used in performance of the Statement of Work.
- (b) Notwithstanding the estimated DPLH, should it be insufficient or in excess of that needed, the contract term shall prevail and the Contractor will be required to provide the DPLH that may be considered reasonable by DOE during the term of the contract. In the event the Contractor shall be required to provide more than the estimated DPLH set forth herein, a contract modification will be required to increase the estimated DPLHs and the contract ceiling based on the hourly rates stated in the contract.

[End of Clause]

##### **B.3 ORO B13 PRICE SCHEDULE (TIME-AND-MATERIAL AND LABOR-HOUR) (MAY 1999)**

- (a) The contractor shall provide personnel in the labor categories and at the hourly rates (wages, indirect costs, general and administrative expenses, and fee) set forth below. The quantity of labor-hours are estimated amounts and may vary during the period of performance. The hourly rates are fixed for the full period of performance of the contract. The wage rates included in the fully burdened hourly rates are not subject to revision unless required by the Service Contract Act or the applicable union agreements. Any adjustment required by the Service Contract Act will be in accordance with Department of Labor (DOL) Wage Determinations. Any revised DOL Wage Determination will be included in Part III, Section J of this contract. The indirect costs, general and administrative expense, and profit applied to the hourly rates are fixed for the full term of the contract and will not be changed if wage rates are adjusted as a result of the Service Contract Act or the applicable union agreements.

- (b) The materials, supplies, and equipment to be furnished by the Government are set forth in Section J, Attachment C. In the event, however, that the contractor is required by the contracting officer to acquire such items, reimbursement will be in accordance with FAR 52.232-7. Reasonable and allocable material handling costs may be included as an element of costs in the "Other Direct Costs" in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The material handling cost rate is fixed for the full period of performance of the contract.
- (c) In accordance with FAR 52.246-6, Inspection—Time-and-Material and Labor-Hour, the Government may require the contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in FAR 52.246-6, paragraph h, the cost of replacement or correction shall be determined under FAR 52.232-7, Payments Under Time-and Material and Labor-Hour Contracts, but the hourly rates for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to fee.

**Y-12 SITE - Base**  
**July 10, 2002 to January 9, 2004**  
(7/10/02 to 1/9/03) (1/10/03 to 1/9/04)

<u>Labor Categories</u>	<u>Hourly Rate</u>	<u>Hourly Rate</u>	<u>DPLHs</u>
Director, Protective Force Opns. Division	\$		1,976
Commander, Special Operations	\$		2,697
Secretary IV	\$		2,174
Manager, Protective Services Y-12	\$		2,819
Commander	\$		51,443
Officer, Operations	\$		2,906
Major	\$		30,105
Captain	\$		23,759
Lieutenant	\$		59,640
SPO III - Current Staff Straight Time	\$		262,781
SPO II - Straight Time	\$		404,327
SO - Straight Time	\$		40,915
Secretary III	\$		5,494
Supervisor PF Support	\$		6,468
Operations Support Manager	\$		1,840
Director, Info/Personnel Security	\$		1,720
Secretary IV	\$		1,843
Manager, Surveys, Assess., QA	\$		1,693
Specialist, Security	\$		2,018
Analyst I, Security	\$		4,424
Analyst II, Security	\$		1,888
Officer, Security	\$		2,027
Program, Coordinator, Physical Fitness	\$		2,704
Coordinator, Physical Fitness	\$		5,219
Specialist, PSAP	\$		2,897
Specialist I, Security Clearance	\$		8,990
Specialist, Security Education	\$		1,061
Specialist V, Badging	\$		2,829
Specialist II, Badging	\$		7,539
Specialist III, Badging	\$		1,133
Specialist I, Personnel Clearance	\$		3,520

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Labor Categories

Director, Information Security	\$	44,21	97.16	2,392
ALS Specialist VI	\$	42.22	23.42	7,916
ALS Specialist V	\$	45.34	64.18	6,714
ALS Specialist IV	\$	41.31	52.54	5,362
ALS Specialist III	\$	45.10	47.04	6,008
ALS Specialist I	\$	35.32	38.77	2,916
TSCM Specialist	\$	70.40	73.40	4,641
OPSEC Specialist	\$	63.77	61.76	3,765
CMPC Specialist VII	\$	41.44	44.43	1,704
CMPC Specialist V	\$	45.45	47.56	2,477
CMPC Specialist IV	\$	41.01	42.43	1,022
Secretary IV	\$	34.34	30.43	2,467

**Y-12 OVERTIME**

(7/10/02 to 1/9/03) (1/10/03 to 1/9/04)

Overtime

<u>Labor Categories</u>		<u>Hourly Rate</u>	<u>Hourly Rate</u>	<u>Hours</u>
Commander, Special Operations (O/T)	\$	34.34	34.34	287
Commander (Overtime)	\$	73.42	73.42	5,876
Major (Overtime)	\$	57.74	70.42	6,892
Captain (Overtime)	\$	49.15	73.07	2,323
Lieutenant (Overtime)	\$	35.35	102.01	17,510
Secretary III (Overtime)	\$		44.10	152
SO - Overtime	\$	42.72	42.72	10,172
SPO II - Overtime	\$	31.55	31.55	111,828
SPO III - Current Staff Overtime	\$	54.47	54.47	92,116
Operations Officer	\$	53.57	53.57	227
Officer, Logistics (Overtime)	\$	53.40	53.40	-
Secretary IV (Overtime)	\$	45.63	45.63	30
Program Coordinator, Physical Fitness	\$	50.74	50.74	-
Coordinator, Physical Fitness	\$	41.40	41.40	452
Specialist, PSAP	\$	51.07	51.07	20
Specialist II, Badging	\$			76
Specialist III, Badging	\$			-
Security Clearance Spec I	\$			39

**Y-12 Base Period Summary**

Estimated Total DPLHs:	998,233
Estimated DPLH Ceiling Price:	\$ 38,483,303
User Fee Cost:	\$ 1,910,150
Estimated Overtime Hours:	248,000
Estimated Overtime Price:	\$ 13,438,205
Other Direct Costs:	\$ 5,003,022
Ceiling Price:	\$ 58,834,679
Potential Award Fee:	\$ 5,148,133
Total Ceiling Price and Potential Award Fee:	\$ 63,982,812
The hourly rates include a base fee of -----	0 percent.
The fixed Material Handling Cost Rate of -----	0 included in the Other Direct Costs above.

**CENTRAL TRAINING FACILITY (CTF)**

<u>Labor Categories</u>	(7/10/02 to 1/9/03)		(1/10/03 to 1/9/04)	<u>DPLHs</u>
	<u>Hourly Rate</u>	<u>Hourly Rate</u>	<u>Hourly Rate</u>	
Director, Training & Emer. Mgt. Div.	\$			2,688
Secretary IV	\$			2,662
Mgr, CTF - Rangemaster	\$			2,590
Assistant, Clerical	\$			5,395
Lead Instructor, Firearms	\$			2,637
Instructor, Firearms	\$			12,557
Lead Instructor, Tactics	\$			2,620
Instructor, Tactics	\$			9,843
Senior Developer, Curriculum	\$			2,622
Developer, Curriculum	\$			2,592
Senior Assistant, Reports & Data	\$			2,509
Officer, Range Safety	\$			2,732
Laborers, Janitorial & Grounds Maint.	\$			-
Manager, Surveys, Assess., QA	\$			541

**CENTRAL TRAINING FACILITY OVERTIME**

<u>Labor Categories</u>	(7/10/02 to 1/9/03)		(1/10/03 to 1/9/04)	<u>Overtime Hours</u>
	<u>Hourly Rate</u>	<u>Hourly Rate</u>	<u>Hourly Rate</u>	
Secretary IV (Overtime)	\$			20
Assistant, Clerical (Overtime)	\$			40
Lead Instructor, Firearms (Overtime)	\$			20
Instructor, Firearms (Overtime)	\$			320
Lead Instructor, Tactics (Overtime)	\$			20
Instructor, Tactics (Overtime)	\$			212
Officer, Range Safety (Overtime)	\$			20
Curriculum Developer	\$			0

**CTF Base Period Summary**

Estimated Total DPLHs:	51,988	
Estimated DPLH Ceiling Price:	\$	2,479,657
Estimated Overtime Hours:	652	
Estimated Overtime Price:	\$	44,293
Other Direct Costs:	\$	379,454
Ceiling Price:	\$	2,903,404
Potential Award Fee:	\$	281,190
Total Ceiling Price and Potential Award Fee:	\$	3,184,594
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of -----	0	cluded in the Other Direct Costs above.

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**Y-12 OPTION HOURS FOR SPO III'S**  
**Based on an additional 100 FTE's**

<u>Labor Categories</u>	<u>Hourly Rate</u>	<u>Hourly Rate</u>	<u>DPLHs</u>
SPO III - Additional 100 SPO's St.Time	\$	\$	702,400

**Y-12 Option Hour Summary for Base Period**

Estimated Total DPLHs:	175,600	
Estimated DPLH Ceiling Price:	\$	24,246,077
User Fee Costs:	\$	1,226,875
Other Direct Costs:	\$	4,997,365
Ceiling Price:	\$	30,470,317
Potential Award Fee:	\$	1,059,312
Total Ceiling Price and Potential Award Fee:	\$	31,529,629
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of --	0	cluded in the Other Direct Costs above.

**Base Period Summary (7/10/2002 - 1/09/2004) (w/o SPO III Option)**

Estimated Total DPLHs:	1,050,221	
Estimated DPLH Ceiling Price:	40,962,959	
User Fee Costs:	\$	1,910,150
Estimated Overtime Hours:	248,652	
Estimated Overtime Price:	13,482,498	
Other Direct Costs:	5,382,476	
Ceiling Price:	\$	61,738,083
Potential Award Fee:	\$	5,429,323
Total Ceiling Price and Potential Award Fee:	\$	67,167,406
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of --	0	cluded in the Other Direct Costs above.

**Base Period Summary (7/10/2002 - 1/09/2004) (Inc SPO III Option)**

Estimated Total DPLHs:	1,225,821	
Estimated DPLH Ceiling Price:	65,209,036	
User Fee Costs:	3,137,025	
Estimated Overtime Hours:	248,652	
Estimated Overtime Price:	\$	13,482,498
Other Direct Costs:	\$	10,379,841
Ceiling Price:	\$	92,208,400
Potential Award Fee:	\$	6,488,635
Total Ceiling Price and Potential Award Fee:	\$	98,697,035
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of --	0	cluded in the Other Direct Costs above.

**Y-12 SITE - First Option Year**  
**January 10, 2004 to December 31, 2004**

<u>Labor Categories</u>	<u>Hourly Rate</u>	<u>DPLHs</u>
Director, Protective Force Opns. Division	\$ 145.31	1,179
Commander, Special Operations	\$ 153.78	1,596
Secretary IV	\$ 162.65	1,261
Manager, Protective Services Y-12	\$ 70.08	1,680
Commander	\$ 153.49	30,249
Officer, Operations	\$ 124.37	1,680
Major	\$ 148.70	21,932
Captain	\$ 120.71	13,444
Lieutenant	\$ 103.63	35,290
SPO III - Current Staff Straight Time	\$ 153.74	169,688
SPO II - Straight Time	\$ 134.80	244,318
SO - Straight Time	\$ 125.04	22,817
Secretary III	\$ 161.84	3,361
Supervisor PF Support	\$ 160.65	3,361
Director, Info/Personnel Security	\$ 71.44	1,029
Secretary IV	\$ 161.84	1,081
Manager, Surveys, Assess., QA	\$ 71.12	1,081
Specialist, Security	\$ 168.00	1,207
Analyst I, Security	\$ 140.91	2,201
Analyst II, Security	\$ 140.91	1,101
Officer, Security	\$ 161.28	1,101
Program, Coordinator, Physical Fitness	\$ 147.45	1,716
Coordinator, Physical Fitness	\$ 147.45	3,433
Specialist, PSAP	\$ 153.34	1,716
Specialist I, Security Clearance	\$ 161.28	5,183
Specialist, Security Education	\$ 114.73	561
Specialist V, Badging	\$ 161.28	1,700
Specialist II, Badging	\$ 161.28	3,433
Specialist III, Badging	\$ 161.28	-
Specialist I, Personnel Clearance	\$ 161.28	1,716

Labor Categories

Director, Information Security	\$	1,416
AIS Specialist VI	\$	5,052
AIS Specialist V	\$	3,560
AIS Specialist IV	\$	3,525
AIS Specialist III	\$	3,718
AIS Specialist I	\$	1,816
TSCM Specialist	\$	1,771
OPSEC Specialist	\$	2,123
CMPC Specialist VII	\$	1,071
CMPC Specialist V	\$	1,404
CMPC Specialist IV	\$	719
Secretary IV	\$	1,416

**Y-12 OVERTIME**

Labor Categories

	<u>Hourly Rate</u>	<u>Overtime Hours</u>
Commander, Special Operations (O/T)	\$	143
Commander (Overtime)	\$	2,926
Major (Overtime)	\$	3,913
Captain (Overtime)	\$	1,232
Lieutenant (Overtime)	\$	11,256
Secretary III (Overtime)	\$	56
SO - Overtime	\$	6,132
SPO II - Overtime	\$	87,732
SPO III - Current Staff Overtime	\$	62,400
Program Coordinator, Physical Fitness	\$	-
Coordinator, Physical Fitness	\$	225
Specialist, PSAP	\$	10
Specialist II, Badging	\$	20
Specialist III, Badging	\$	-

**Y-12 First Option Period Summary**

Estimated Total DPLHs:	607,706	
Estimated DPLH Ceiling Price:	\$	24,190,395
User Fee Cost:	\$	1,389,200
Estimated Overtime Hours:	176,045	
Estimated Overtime Price:	\$	9,681,647
Other Direct Costs:	\$	4,773,612
Ceiling Price:	\$	40,034,854
Potential Award Fee:	\$	3,485,838
Total Ceiling Price and Potential Award Fee:	\$	43,520,692
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of ---	0	is included in the Other Direct
Costs above.		

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### CENTRAL TRAINING FACILITY (CTF)

<u>Labor Categories</u>	<u>Hourly Rate</u>	<u>DPLHs</u>
Director, Training & Emer. Mgt. Div.	\$ 14.38	1,717
Secretary IV	\$ 25.67	1,717
Mgr, CTF - Rangemaster	\$ 33.11	1,717
Assistant, Clerical	\$ 25.60	3,433
Lead Instructor, Firearms	\$ 57.99	1,717
Instructor, Firearms	\$ 50.54	8,583
Lead Instructor, Tactics	\$ 54.12	1,717
Instructor, Tactics	\$ 40.05	6,866
Senior Developer, Curriculum	\$ 34.77	1,717
Developer, Curriculum	\$ 26.52	1,717
Senior Assistant, Reports & Data	\$ 25.12	1,717
Officer, Range Safety	\$ 33.75	1,717
Laborers, Janitorial & Grounds Maint.	\$	-
Manager, Surveys, Assess., QA	\$ 75.00	361

### CENTRAL TRAINING FACILITY OVERTIME

<u>Labor Categories</u>	<u>Hourly Rate</u>	<u>Overtime Hours</u>
Secretary IV (Overtime)	\$ 31.50	20
Assistant, Clerical (Overtime)	\$ 39.90	40
Lead Instructor, Firearms (Overtime)	\$ 86.98	20
Instructor, Firearms (Overtime)	\$ 71.81	100
Lead Instructor, Tactics (Overtime)	\$ 87.19	20
Instructor, Tactics (Overtime)	\$ 75.95	80
Officer, Range Safety (Overtime)	\$ 72.95	20

### CTF First Option Period Summary

Estimated Total DPLHs:	34,696	
Estimated DPLH Ceiling Price:	\$ 1,764,172	
Estimated Overtime Hours:	300	
Estimated Overtime Price:	\$ 21,048	
Other Direct Costs:	\$ 384,011	
Ceiling Price:	\$ 2,169,231	
Potential Award Fee:	\$ 195,665	
Total Ceiling Price and Potential Award Fee:	\$ 2,364,896	
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of ----	0	is included in the Other Direct Costs above.

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**Y-12 OPTION HOURS FOR SPO III'S**  
**Based on an additional 100 FTE's**

<u>Labor Categories</u>	<u>Hourly Rate</u>	<u>DPLHs</u>
SPO III - Additional 100 SPO's St.Time	\$	171,270

**Y-12 Option Hour Summary for First Option Period**

Estimated Total DPLHs:	171,270	
Estimated DPLH Ceiling Price:	\$ 6,295,885	
User Fee Costs:	\$ 377,500	
Other Direct Costs:	\$ 1,516,653	
Ceiling Price:	\$ 8,190,038	
Potential Award Fee:	\$ 704,604	
Total Ceiling Price and Potential Award Fee:	\$ 8,894,642	
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of ----	0	is included in the Other Direct Costs above.

**First Option Period Summary (1/10/2004 - 12/31/2004) (w/o SPO III Option)**

Estimated Total DPLHs:	642,402	
Estimated DPLH Ceiling Price:	\$ 25,954,567	
User Fee Costs:	\$ 1,389,200	
Estimated Overtime Hours:	176,345	
Estimated Overtime Price:	\$ 9,702,696	
Other Direct Costs:	\$ 5,157,623	
Ceiling Price:	\$ 42,204,085	
Potential Award Fee:	\$ 3,681,503	
Total Ceiling Price and Potential Award Fee:	\$ 45,885,588	
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of ----	0	is included in the Other Direct Costs above.

**First Option Period Summary (1/10/2004 - 12/31/2004) (Including SPO III Option)**

Estimated Total DPLHs:	813,672	
Estimated DPLH Ceiling Price:	\$ 32,250,452	
User Fee Costs:	\$ 1,389,200	
Estimated Overtime Hours:	176,345	
Estimated Overtime Price:	\$ 9,702,696	
Other Direct Costs:	\$ 6,674,276	
Ceiling Price:	\$ 50,016,623	
Potential Award Fee:	\$ 4,386,107	
Total Ceiling Price and Potential Award Fee:	\$ 54,402,730	
The hourly rates include a base fee of -----	0	percent.
The fixed Material Handling Cost Rate of ----	0	is included in the Other Direct Costs above.

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**B.4 ORO B30 OBLIGATION OF FUNDS (TIME-AND-MATERIALS/LABOR-HOUR) (FEB 1999)**

- (a) The total amount obligated to the contract for the item(s) described in ORO B01, Items Being Acquired, is \$10,790,752. It is estimated that this amount is sufficient to cover contract performance through September 30, 2002.
- (b) The Government will not be obligated to make any payment to the Contractor in excess of the total amount from time to time obligated to this contract. However, when and to the extent that the total amount obligated to this contract has been increased, any invoice or voucher with respect to a period prior to the increase and in excess of the amount previously obligated, will be paid as if the invoice or voucher were for a period after the increase in amount obligated.

[End of Clause]

**B.5 ORO B35 OPTION(S) TO EXTEND THE CONTRACT (TIME-AND-MATERIALS/ LABOR-HOUR) ALTERNATE III (NOV 1998)**

- (a) In order to demonstrate the value it places on quality performance, the Department has provided a mechanism for continuing a contractual relationship with a successful contractor that performs at a level which meets or exceeds quality performance expectations as communicated to the contractor, in writing, by the contracting officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the contractor's performance under the contract.
- (b) This contract shall be extended, at the unilateral option of the Government in accordance with FAR 52.217-9 set forth in Section I. Further, the Contractor agrees that the performance under option(s) which are exercised shall be accomplished within the hourly rates and contract ceiling price set forth in ORO B13 Price Schedule (Time-and-Material and Labor Hour) (May 1999).
- (c) The Contractor shall provide personnel in the labor classifications and at the hourly rate set forth in the clause entitled *Price Schedule* in Section B. The quantity of labor-hours are estimated amounts and may vary during the period of performance. The hourly rates are fixed for the full period of performance of the contract. The wage rates included in the fully burdened hourly rates are not subject to revision unless required by the Service Contract Act or the applicable union agreements. Any adjustment required by the Service Contract Act will be in accordance with Department of Labor (DOL) Wage Determinations. Any revised DOL Wage Determination will be included in Part III, Section J of this contract. The indirect costs, general and administrative expense, and profit are fixed for the full term of the contract and will not be changed if wage rates are adjusted as a result of the Service Contract Act or the applicable union agreements.

All materials, supplies, and equipment will be furnished by the Government as set forth in Section J, Attachment C. In the event, however, that the Contractor is required by the Contracting Officer to acquire such items, reimbursement will be in accordance with FAR 52.232-7. Reasonable and allocable material handling costs may be included in the charge for materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The material handling cost rate is fixed for the full period of performance of the contract.

- (d) In accordance with FAR 52.246-6 Inspection--Time-and-Materials and Labor-Hour, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in FAR 246-6, paragraph (h), the costs of replacement or correction shall be determined under FAR 52.232-7, Payments Under Time-and-Material and Labor-Hour Contracts, but the hourly rates for labor incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit.
- (e) As may be appropriate, the Government may elect to exercise an option earlier than the period stated in paragraph (b) of this clause. The contract will then be modified to exercise the option early. The term of the contract shall be extended to the end of the exercised option period. DPLH not expended during their specified period may be expended during a subsequent period.
- (f) Nothing in this clause shall be construed to constitute authorization for work not in accordance with the *Obligation of Funds* clause in Section B of the contract.

[End of Clause]

**B.6 PAYMENT OF BASE AND AWARD FEE (NOV 1998)**

**Base Fee.** The government will make payment of the base fee in monthly increments as a part of the contractor's hourly rates. The amount payable shall be based on the fee percentage included in the hourly rates and the number of direct productive labor hours worked and determined acceptable by the contracting officer.

**Award Fee.** The government will promptly make payment of any Award Fee upon the submission, by the contractor to the contracting officer or his/her authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated.

[End of Clause]

**B.7 DETERMINATION OF AWARD FEE EARNED (NOV 1998)**

- (a) The government shall at the conclusion of each specified evaluation period (s) evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of award fee earned will be made by the government Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the *Disputes* clause or to any other appeal clause.
- (b) It is agreed that the evaluation of contract performance shall be in accordance with the Performance Evaluation Plan referenced in the clause entitled *Performance Evaluation Plan* in Section B and that the contractor shall be promptly advised in writing of the determination, and the reasons why it was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance for each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, any self-evaluation which is received within ten days after the end of the period being evaluated, may be given such consideration, if any, as the FDO shall find appropriate.
- (c) Fees unearned under one fee cycle may not be carried forward to another fee cycle. Unearned fee may be unilaterally deobligated from the contract by the Government.

[End of Clause]

**B.8 PERFORMANCE EVALUATION PLAN (NOV 1998)**

- (a) A contractor Performance Evaluation Plan upon which the determination of award fee shall be based, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area, will be unilaterally established by the government. A copy of the plan shall be provided to the contractor 30 calendar days prior to the start of the first evaluation period.
- (b) The Performance Evaluation Plan shall set forth the criteria upon which the contractor will be evaluated for performance relating to any (1) Technical including Schedule requirements, if appropriate, (2) Management, and (3) Cost Functions selected for evaluation.
- (c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the government at any time during the period of performance. Notification of such changes shall be provided to the contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.

(End of Clause)

**B.9 DISTRIBUTION OF FEES (MAR 2001)**

- (a) The total amounts of award fee available under this contract is assigned to the following evaluation periods in the indicated amounts:

**BASE PERIOD--**

Evaluation Period: 07/10/2002 - 01/09/2003  
Potential Award Fee: \$1,772,027

Evaluation Period: 01/10/2003 - 07/09/2003  
Potential Award Fee: \$1,828,648

Evaluation Period: 07/10/2003 - 01/09/2004  
Potential Award Fee: \$1,828,648

**OPTION YEAR**

Evaluation Period: 01/10/2004 - 07/09/2004  
Potential Award Fee: \$1,840,751

Evaluation Period: 07/10/2004 - 12/31/2004  
Potential Award Fee: \$1,840,752

**Y-12 OPTION - BASE PERIOD**

Evaluation Period: 07/10/2002 - 01/09/2003  
Potential Award Fee: \$349,940

Evaluation Period: 01/10/2003 - 07/09/2003  
Potential Award Fee: \$354,686

Evaluation Period: 07/10/2003 - 01/09/2004  
Potential Award Fee: \$354,686

**Y-12 OPTION HOURS - OPTION YEAR**

Evaluation Period: 01/10/2004 - 07/09/2004  
Potential Award Fee: \$352,302

Evaluation Period: 07/10/2004 - 12/31/2004  
Potential Award Fee: \$352,302

In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official (FDO).

[End of Clause]

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## **SECTION C**

### **DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**C.1 ORO C01 PERFORMANCE-BASED STATEMENT OF WORK (MAY 1997)**

The Statement of Work is located in Part III--Section J of this contract.

[End of Clause]

**C.2 ORO C20 REPORTS (MAY 1997)**

Reports shall be prepared and submitted in accordance with Section J, Attachment B, Reporting Requirements, the clause entitled "Uniform Reporting System," and other clauses in the contract which specify reporting requirements.

[End of Clause]



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## SECTION D

### PACKAGING AND MARKING

#### D.1 ORO D01 PACKAGING (MAY 1997)

- (a) Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).
- (b) Except for those reports required by the Reporting Requirements Checklist of the contract, which are coded by A (As required) or X (With proposal) where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer except for those reports coded A or X.

[End of Clause]

#### D.2 ORO D05 MARKING (MAY 1997)

- (a) Each package, report or other deliverable shall be accompanied by a letter or other document which:
  - (1) Identifies the contract by number under which the item is being delivered.
  - (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
  - (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.
- (b) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required in (a) above shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

[End of Clause]

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## SECTION E

### INSPECTION AND ACCEPTANCE

#### E.1 52.246-6 INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (JAN 1986)

- (a) Definitions. "Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--
- (1) All or substantially all of the Contractor's business;
  - (2) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or
  - (3) A separate and complete major industrial operation connected with the performance of this contract.
- "Materials," as used in this clause, includes data when the contract does not include the Warranty of Data clause.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed

within the ceiling price (or the ceiling price as increased by the Government), the Government may—

- (i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
  - (ii) Terminate this contract for default.
- (2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
- (j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
- (k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

[End of Clause]

**E.2 ORO E03 INSPECTION (MAY 1997)**

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

[End of Clause]

**E.3 ORO E05 ACCEPTANCE (MAY 1997)**

Acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer, or any duly designated successors.

[End of Clause]



## SECTION F

### DELIVERIES OR PERFORMANCE

#### F.1 52.242-15 STOP-WORK ORDER (AUG 1989)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--
  - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

[End of Clause]

#### F.2 52.247-55 F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)

- (a) Unless otherwise specified in this solicitation, any Government property furnished to the Contractor for use within the United States (excluding Alaska and Hawaii) or Canada will be delivered by the Government at a point to be specified by the Contractor in the offer. Should the Government elect to make delivery by railroad, the f.o.b. point shall be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point shall be railroad cars in the same or nearest city having rail service. All line-haul transportation costs to the specified destination shall be borne by the Government. The Government may choose the mode of transportation and the carriers.
- (b) If the destination of such Government-furnished property is a Contractor's plant located outside the 48 contiguous states, the District of Columbia or Canada, the f.o.b. point for

Government delivery of Government-furnished property shall be a location in the United States (excluding Alaska and Hawaii) specified by the Contractor. If the Contractor fails to name a point, then the f.o.b. point shall be the port city in the United States nearest to the Government source of the Government-furnished property that has regular commercial water transportation services to the offshore port nearest Contractor's plant.

- (c) Unless otherwise directed by the Contracting Officer or provided in the contract, the Contractor shall return all Government-furnished equipment, supplies, and property, including all property not returned in the form of acceptable end items, to the point at which the Government property was originally furnished to the Contractor under the contract. Notwithstanding the fact that the Government may have furnished the property at the Contractor's plant, the Contracting Officer may direct the Contractor to deliver the Government property being returned to, and load, block, and brace it in, railway cars in the city in which the Contractor's plant is located, or, if the Contractor's city is not served by rail service, in the nearest city having rail service. Unless otherwise specified in the contract, all property shall be packed in containers conforming with the rules of common carrier published tariffs so as to be free of penalty charges by the carrier designated for shipment by the Government.

[End of Clause]

**F.3 ORO F03 TERM OF CONTRACT ALTERNATE I (DEC 1998)**

The term of this contract is from July 10, 2002 to January 9, 2004. However, at the Government's sole discretion, this contract may be extended for an additional one year option pursuant to the clauses entitled "Option(s) to Extend the Contract (Time and Materials/Labor Hour).

[End of Clause]

**F.4 ORO F05 PRINCIPAL PLACE OF PERFORMANCE (MAY 1997)**  
Oak Ridge, Tennessee

[End of Clause]

## SECTION G

### CONTRACT ADMINISTRATION DATA

#### G.1 ORO G01 CORRESPONDENCE PROCEDURES (MAY 1997)

All correspondence submitted by the Contractor (except for invoices and reports) shall be subject to the following procedures:

- (a) Technical Correspondence. Technical correspondence concerning performance of this contract shall be addressed to the DOE Contracting Officer's Representative (COR), with an information copy of the correspondence to the DOE Contract Specialist.
- (b) Patents/Technical Data Correspondence. Correspondence concerning patent and technical data issues shall be addressed to the Assistant Chief Counsel for Intellectual Property, Office of Chief Counsel, USDOE, Post Office Box 2001, Oak Ridge, TN, 37831-8751, with an information copy to the Contracting Officer and the COR.
- (c) Non-technical Administrative Correspondence. All correspondence, other than technical correspondence, shall be addressed to the Contracting Officer or Contract Specialist designated in the clause ORO G25, *Contract Administration*, with information copies of the correspondence to the DOE COR, and to the DOE Assistant Chief Counsel for Intellectual Property (where patent or technical data issues are involved).
- (d) Subject Line(s). All correspondence shall contain a subject line commencing with the contract number, as illustrated below:

"SUBJECT: Contract No. [ ] (Insert the contract number) [ ] (Insert subject topic after contract number, e.g., "Request for subcontract placement consent")".

[End of Clause]

#### G.2 ORO G10 SUBMISSION OF VOUCHERS/INVOICES (MAY 1999)

- (a) The Contractor shall submit invoices in accordance with FAR 52.232-7, *Payments Under Time-and-Materials and Labor Hour Contracts* in Section I of the contract (unless prior written consent from the Contracting Officer for more frequent billing is obtained). The period of performance covered by the invoices should be the same as covered by any required monthly cost management reports.
- (b) The invoice (Standard Form 1034) should include a statement of cost for services rendered. This statement should include, as a minimum, those items outlined in clause ORO G15, *Billing Instructions - Time and Materials Contract, Alternate I*, for all services actually provided by the Contractor, both for the current billing period and cumulatively for the entire contract. The statement of cost must include a certification statement signed by a responsible official of the Contractor. The Contractor shall submit the invoice to the addressees prescribed below:

Original and one copy to: U.S. Department of Energy  
Oak Ridge Operations Office  
Oak Ridge Financial Service Center  
P.O. Box 6017  
Oak Ridge, Tennessee 37831

One copy to: U.S. Department of Energy  
NNSA Y-12 Site Office  
ATTN: Donat St. Pierre, Contracting Officer's Representative  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

One copy to: U.S. Department of Energy  
NNSA Y-12 Site Office  
ATTN: William Wistrom, Contracting Officer  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

- (c) In addition to the above submission, the contractor shall submit one copy of each invoice to the designated contract technical monitor(s).

[End of Clause]

**G.3 ORO G15 BILLING INSTRUCTIONS--TIME AND MATERIALS CONTRACT ALTERNATE I  
(JAN 1999)**

- (a) These instructions are provided for use by Contractors in the preparation and submission of vouchers requesting reimbursement for work performed under time and material type contracts. Compliance with these instructions will reduce correspondence and other causes for delay to a minimum and will thus promote prompt payments to the Contractor.
- (b) Preparation of the Statement of Cost (See attached format)
- (1) Statement of Cost shall be completed, making due allowance for the Contractor's cost accounting system.
  - (2) For task order or work assignment contracts, the Contractor shall complete the Statement of Cost for each task order work or assignment consistent with ORO B13, Price Schedule, and a summary for the total invoiced cost.
  - (3) Costs claimed shall be only those recorded costs authorized for billing by the payment provisions of the contract.
  - (4) A separate Statement of Cost should be submitted for each task order/work assignment for claimed overtime costs.
  - (5) All claimed subcontractor costs shall be supported by attaching copies of the subcontractor's invoice with the same detail as outlined herein.
  - (6) The DPLH incurred during the current billing period must be shown and the DPLH Summary completed.
  - (7) The certification on the Statement of Cost must be signed by a responsible official of the Contractor.
  - (8) Additional supporting data for claimed costs shall be provided in such form and reasonable detail as an authorized representative of the Contracting Officer may require.

[End of Clause]

STATEMENT OF COST - TIME AND MATERIAL CONTRACTS

Contractor: \_\_\_\_\_ Contract No: \_\_\_\_\_  
Address: \_\_\_\_\_ Voucher No: \_\_\_\_\_  
\_\_\_\_\_ Task Order No: \_\_\_\_\_  
\_\_\_\_\_ Work Assignment No: \_\_\_\_\_

Contract Amount (face value):  
Estimated Cost \$ \_\_\_\_\_  
All Modifications \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

Amount Authorized for Expenditure (Obligated):  
Basic Contract \$ \_\_\_\_\_  
Contract to Date \$ \_\_\_\_\_

Cost Elements	CURRENT PERIOD			Current Amount	CUMULATIVE	
	Hourly Rate	\$	DPLH		Amount Total Contract \$	DPLH

Labor Categories

Materials and  
Subcontracts:

Total DPLH  
Total Amount

Credit (explain)  
Contractors Share (if any)  
Government's Share

DPLH Summary Per Labor Category (if applicable)

DPLH Authorized \_\_\_\_\_  
DPLH Incurred \_\_\_\_\_  
DPLH Balance \_\_\_\_\_

Cumulative Billing Summary

Cumulative \$ \_\_\_\_\_ Prime \_\_\_\_\_ (percent) Subcontract \$ \_\_\_\_\_ (percent)

CERTIFICATION: I certify that this invoice is correct and in accordance with the terms of the contract and that the costs included herein have been incurred, represent payments made by the Contractor except as otherwise authorized in the payments provisions of the contract, and properly reflect the work performed.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

Name and address of preparer:

Name: \_\_\_\_\_  
Company: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_



**G.4 ORO G20 CONTRACTING OFFICER'S REPRESENTATIVE (COR) (MAY 1997)**

The Contracting Officer's Representative will be designated by separate letter and will represent the Contracting Officer in the technical phases of the work. A copy of this designation letter shall be furnished to the Contractor. The COR is not authorized to change any of the terms and conditions of this contract. Changes in the Scope of Work will be made only by the Contracting Officer by properly written modification(s) to the contract. Additional Contracting Officer's Representative(s) for other purposes as required may be designated in writing by the Contracting Officer.

[End of Clause]

**G.5 ORO G25 CONTRACT ADMINISTRATION (MAY 1997)**

The contract will be administered by:

U.S. Department of Energy  
NNSA Y-12 Site Office  
ATTN: William Wistrom, Contracting Officer  
P.O. Box 2001  
Oak Ridge, TN 37831

Written communication shall make reference to the contract number and shall be mailed to the Contract Specialist designated via separate correspondence to the above address.

[End of Clause]

**G.6 ORO G30 CONTRACT TECHNICAL MONITOR (MAY 1997)**

The Contract Technical Monitor (CTM) may be designated by separate letter by the COR. The CTM assists the Contracting Officer Representative. The CTM is not authorized to change any of the terms and conditions of the contract. Changes in the Scope of Work will be made only by the Contracting Officer by properly written modification(s) to the contract.

[End of Clause]

## SECTION H

### SPECIAL CONTRACT REQUIREMENTS

#### H.1 ORO H01 CONSECUTIVE NUMBERING (MAY 1997)

Due to automated procedures employed in formulating this document, clauses contained within it may not always be consecutively numbered.

[End of Clause]

#### H.2 ORO H03 TECHNICAL DIRECTION ALTERNATE I (MAY 1997)

- (a) Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
  - (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
  - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
  - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
  - (4) Directions to the Contractor which suspend work when clear and present danger exists to workers or members of the public. Clear and present danger is a condition or hazard which could be expected to cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
  - (1) Constitutes an assignment of additional work outside the Statement of Work;
  - (2) Constitutes a change as defined in the contract clause entitled "Changes";
  - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within his authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in paragraph (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the

Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:

- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract;
  - (2) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter not to perform under the direction and cancel the direction; or
  - (3) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes--Alternate I."

[End of Clause]

### H.3 ORO H05 MODIFICATION AUTHORITY (MAY 1997)

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) Accept nonconforming work,
- (b) Waive any requirement of this contract, or
- (c) Modify any term or condition of this contract.

[End of Clause]

### H.4 ORO H10 OVERSIGHT OF CONTRACTOR (MAY 1999)

- (a) The parties recognize that DOE has entered into Contract No. DE-AC05-84OR21400 (hereinafter referred to as Contract OR21400) with Lockheed Martin Energy Systems, Inc. (hereinafter LMES), Contract No. DE-AC05-96OR22464 (hereinafter referred to as Contract OR22464) with Lockheed Martin Energy Research Corporation (hereinafter LMER), and Contract No. DE-AC05-98OR22700 (hereinafter referred to as Contract OR22700) with Bechtel Jacobs for the management and operation of Government-owned facilities located in Oak Ridge, Tennessee, at which the Contractor will be performing under this contract. The Contractor hereby agrees that while it is performing work at such sites it shall comply with applicable Federal, state and local laws, regulations, DOE orders and directions, and with the standards and procedures of LMES, LMER or Bechtel Jacobs with respect to health, safety, environmental, quality assurance, and safeguard and security matters. The Contractor agrees that its responsibility to comply with the foregoing is not reduced by the oversight provided by LMES under Contract OR21400, by LMER under Contract OR22464, and Bechtel Jacobs under Contract OR22700 nor are any of the Contractor's responsibilities assumed by LMES, LMER or Bechtel Jacobs. The Contractor acknowledges that the performance by LMES under Contract OR21400, LMER under Contract OR22464 or Bechtel Jacobs under OR22700 is not intended to and does not reduce the Contractor's obligations, responsibilities, and/or accountability to DOE or any regulatory agency, including judicial body, responsible for audit, licensing, permitting, or other administrative review or adjudication capacity.
- (b) The Contractor agrees to cooperate fully and in good faith with DOE and LMES, LMER or Bechtel Jacobs so as to enable LMES, LMER or Bechtel Jacobs to perform their obligations under Contract OR21400, under Contract OR22464, Contract OR22700 including evaluation of the Contractor's programs, procedures, systems, processes, and policies regarding health and safety, housekeeping, environmental requirements, radiation

protection, security, quality assurance, industrial hygiene, criticality safety, and related operations.

- (c) The Contractor acknowledges that Contract OR21400, Contract OR22464, or Contract OR22700 authorizes LMES, LMER or Bechtel Jacobs, under specified circumstances, to suspend work of the Contractor or deny the Contractor access to the Government's facilities. The Contractor agrees to comply with any such LMES, LMER, or Bechtel Jacobs direction.
- (d) The Contractor agrees to include in all subcontracts, that may include on-site work under this contract, a clause which will obligate such subcontractors to comply with the provisions of this clause and to impose these obligations on all their subcontractors or suppliers, at any tier, which involve performance of work on-site. As used in this clause, subcontractor(s) and subcontract(s) include such at any tier.
- (e) The provisions set forth herein are also applicable to all replacements to the above mentioned site contractors.

[End of Clause]

**H.5 ORO H25 SMALL, SMALL DISADVANTAGED, AND WOMAN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (JUN 1999) (Revised)**

The Small, Small Disadvantaged, and Woman-Owned Small Business Subcontracting Plan submitted by the Contractor for this contract, and approved by the Contracting Officer, is, by reference, hereby incorporated in and made a material part of this contract. The Plan is due within 60 days after the effective date of the Contract and may be submitted as part of the Diversity Plan required by ORO H75 DIVERSITY PROGRAM (MAY 1997).

[End of Clause]

**H.6 ORO H35 SAFETY AND HEALTH (MAY 1997)**

The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements set forth in 29 CFR Part 1910, Occupational Safety and Health Standards for General Industry, and 29 CFR Part 1926, Occupational Safety and Health Standards for Construction Industry. In addition, all workers shall wear eye and head protection that complies with American National Standards Institute (ANSI) Z87.1, Z89.1 and Z89.2 at all times while in designated construction or operational areas.

[End of Clause]

**H.7 H40 FLOWDOWN OF SAFETY AND HEALTH CLAUSE (NOV 1998)**

The clause at DEAR 952.223-71, appropriately adjusted to reflect the contractor/subcontractor relationship, shall be included in subcontracts awarded under this contract if the subcontractor will be performing work under the subcontract at a government-owned or leased facility where DOE has required the contractor to submit a documented safety management system (SMS) in accordance with DEAR 952.223-71. The SMS submitted by the subcontractor shall be approved by the contractor. However, DOE reserves the right to require contractor to submit the subcontractor's SMS to the DOE Contracting Officer for review prior to approval by the contractor.

[End of Clause]



**H.8 ORO H50 SECURITY EDUCATION PROGRAM (NOV 1998)**

The contractor shall establish and maintain a Security Education Briefing and Awareness Program acceptable to the Department of Energy (DOE) which satisfies the requirements of DOE Order 470.1. A Safeguards and Security Awareness Coordinator must be appointed and will be responsible for ensuring all employees, cleared and uncleared, who are assigned to a DOE facility or who are performing work involving access to classified facilities, classified information, or special nuclear materials are informed of their security responsibilities. Any subcontracts in support of this work shall require subcontractors to comply with the contractor's Safeguards and Security Awareness Program.

[End of Clause]

**H.9 ORO H55 QUALITY ASSURANCE SYSTEM ALTERNATE I (MAY 1997)**

The contractor shall establish and maintain a formal quality assurance program approved by the Department of Energy (DOE) that satisfies the requirements of DOE Order 5700.6C. The quality assurance program shall encompass all areas of performance by the contractor. If the contract has responsibility to perform activities in connection with a nuclear facility, as defined by Title 10, Section 830.3, Code of Federal Regulations, the applicability of the requirements in Section 830.120 shall be determined. Any subcontracts in support of this work shall require subcontractors to comply with the contractor's approved quality assurance program.

[End of Clause]

**H.10 ORO H65 CONFIDENTIALITY OF INFORMATION (MAY 1997)**

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
  - (1) Information which, at the time of receipt by the Contractor, is in public domain;
  - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
  - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
  - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the



facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

- (e) This clause shall flow down to all appropriate subcontracts.

[End of Clause]

#### **H.11 DIVERSITY PROGRAM (MAY 1997) (Revised)**

- (a) The Contractor shall develop and implement a Diversity Program in support of the DOE Diversity Initiative. A Diversity Plan covering the full period of performance (base and option periods) shall be submitted to the Contracting Officer for approval within 60 days after the effective date of the Contract. Once the Diversity Plan is approved by the Contracting Officer, the Contractor shall implement the plan within thirty (30) days.
- (b) The Diversity Plan shall address, at a minimum, the Contractor's approach to ensure an effective Diversity Program (including addressing applicable Affirmative Action and Equal Employment Opportunity regulations) to include: (1) a statement of the Contractor's policies and practices; (2) planned initiatives and activities which demonstrate a commitment to a Diversity program including recruitment strategies for hiring a diverse work force. The Diversity Plan shall also address, as a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, including a mentor/protégé program, (3) stakeholder involvement and outreach, and (4) subcontracting.
- (c) An annual Diversity Report shall be submitted pursuant to Section J, Attachment B entitled "Reporting Requirements." This report shall provide a list of accomplishments achieved both internally and externally and projected developments during the current reporting period. The report shall also list any proposed changes to the Diversity Plan which shall be subject to Contracting Officer approval.
- (d) Failure on the part of the Contractor to develop and implement a Diversity Plan as required in this clause shall constitute a breach of this contract.
- (e) The Contractor may develop a single Diversity Plan which includes services provided under Contract No. DE-AC05-00OR22690 and Contract No. DE-AC05-02OR22928.

[End of Clause]

#### **H.12 ORO H95 GOVERNMENT PROPERTY ALTERNATE I (MAY 1997)**

- (a) Only that property and data specifically included in the LIST OF GOVERNMENT PROPERTY, Part III-Section J - Attachment C to the contract, shall be furnished by the Government or acquired by the Contractor as a direct charge to this contract. The LIST OF GOVERNMENT PROPERTY indicates whether the property is to be Government-Furnished Property or Contractor-Acquired Property.
- (b) Any request from the contractor to acquire direct charge property not listed in Section J as Contractor-Acquired Property shall include the following, where applicable:
  - (1) Sufficient details to justify and support the acquisition, including the itemized description and cost estimate.
  - (2) An analysis of the most economical method of acquisition (e.g, lease versus purchase).
  - (3) A description of the material equity arising from any proposed lease agreement to reflect any changes in the acquisition authorization.

The LIST OF GOVERNMENT PROPERTY shall be modified as appropriate to reflect any changes in the acquisition authorization.

- (c) The Federal Acquisition Regulation (FAR Subpart 45.5) prescribes the Contractor recordkeeping and reporting requirements for Federal contracts. The FAR reporting requirements apply to plant equipment having an acquisition cost of \$5,000 or more. In addition to these requirements, the Department of Energy requires the Contractor to use established DOE asset codes to identify Government property. The Contractor shall furnish an annual report, as of August 31 of each year for all Government property at subcontractor facilities. The report is due not later than 45 days after the end of the reporting period. The annual reporting requirement applies to capital equipment and real property acquired or disposed of during the period, by asset type. In addition, the annual report must include government-owned materials held in storage for issue when the balance on hand at the end of the reporting period amounts to \$50,000 or more. In most cases, only the beginning and ending balance shall be indicated on the report.
- (d) The contractor shall conduct an inventory of the government-furnished property within 60 days after expiration of the transition period.

[End of Clause]

**H.13 ORO H105 USE OF GOVERNMENT-OWNED EQUIPMENT/FACILITIES (MAY 1997)**

The Contractor is authorized to use on a non-interference basis in the performance of this contract, the Government-owned equipment/facilities indicated in Section J, Attachment C. Such use is authorized on the basis that it will not interfere with the performance of the Government contract(s) for which such property was provided, and, unless otherwise stipulated, shall be in accordance with the terms and conditions thereof.

In addition, the contractor shall be assessed a site user fee as indicated below which shall be applied to each employee who occupies work space at the sites. For employees performing work at more than one site, the user fee will be based on the site to which the employees are assigned.

Y-12	\$6,586
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[End of Clause]

**H.14 ORO H110 AUTOMATED DATA PROCESSING EQUIPMENT (ADPE) USAGE (MAY 1997)**

Requirements for ADPE which were not included in the Contractor's original proposal may not be acquired (leased or purchased) without the prior written consent of the Contracting Officer. Whenever Contracting Officer written consent is required, the Contractor will furnish to the Contracting Officer information concerning the need for and selection of such ADPE, the specific make(s) and model(s), and the lease versus purchase determination.

[End of Clause]

**H.15 ORO H115 AUTOMATED DATA PROCESSING EQUIPMENT (ADPE) LEASING (MAY 1997)**

- (a) If the Contractor leases ADPE equipment for use under this contract, the Contractor shall include a provision in the rental contract stating that the Government shall have the unilateral right to exercise any purchase option under the rental contract between the Contractor and the ADPE equipment vendor and to realize any other benefits earned through rental payments.
- (b) The Contractor shall furnish a copy of the rental contract to the Contracting Officer.

[End of Clause]

**H.16 ORO H150 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (MAY 1997)**

The Representations, Certifications, and Other Statements of the Offeror, dated 6/18/99, for this contract are, by reference, hereby incorporated in and made a part of this contract.

[End of Clause]

**H.17 INSURANCE (NOV 1998)**

In accordance with FAR 28.307-2, the contractor shall provide and maintain the following insurance. Evidence that the contractor has obtained this insurance must be provided to the Contracting Officer prior to the Contractor beginning work. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribed, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

Worker's Compensation and Employer's Liability \$100,000

General Liability (Bodily Injury) 500,000

Comprehensive Automobile Liability (Bodily Injury) 200,000 per person &  
500,000 per occurrence

Comprehensive Automobile Liability (Property Damage) 20,000 per occurrence

(End of Clause)

**H.18 RIGHT OF FIRST REFUSAL (FEB 1998)**

Consistent with the efficient performance of this contract, the Contractor (including any teaming partners/subcontractors and joint venture members) shall, except as otherwise provided herein, offer those employees employed by the predecessor Contractors on the effective date of this contract, and whose predominant assignment is the work described in the Statement of Work (see Attachment A, Section J), a Right of First Refusal (ROFR), for employment under this contract in positions for which they are qualified. The Contractor (including any teaming partners and/or subcontractors and joint venture members as applicable) shall determine the number and types of jobs to be filled, and the number of employees necessary for the efficient performance of this contract, and may elect to employ fewer employees than are employed by the predecessor Contractors performing the work covered by the Statement of Work. The Contractor (including any teaming partners/subcontractors and joint venture members) will be provided a list of the incumbent Contractor employees who have a Right of First Refusal.

The Right of First Refusal does not apply to Key Personnel Positions that the Contractor (including any teaming partners and/or subcontractors and joint venture members) may establish; however, Key Personnel other than those occupying the positions identified as having the Right of First Refusal, may not be used to perform the work currently performed by those individuals occupying positions identified as having the Right of First Refusal.

The Contractor (including any teaming partners and/or subcontractors and joint venture members as applicable) shall not offer employment to anyone on this contract prior to having fully complied with the Right of First Refusal requirements of this Section H.18. The Contractor (including any teaming partners and/or subcontractors and joint venture members) shall make an express offer

of employment to each employee of the incumbent transitioning work force, as provided herein, and shall specify a reasonable time (not less than 10 days from the receipt of an offer), within which the individual must accept such offer.

(End of Clause)

**H.19 LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICERS (DEC 1998)**

The contractor protective force personnel armed pursuant to section 161.k of the Atomic Energy Act of 1954, as amended (42 U. S. C. 2201k et seq.) shall comply with the policies and procedures regarding arrest authority and use of force set forth in 10 CFR Part 1047 published in the Federal Register, Vol. 50, No. 147, Wednesday, July 31, 1985. The contractor shall also comply with any future amendments or revisions to 10 CFR Part 1047 published as a Final Rule in the Federal Register.

(End of Clause)

**H.20 LEGAL DEFENSE AND REIMBURSEMENT OF COSTS ASSOCIATED WITH CONTRACTOR PROTECTIVE FORCE OFFICERS (DEC 1998)**

- (a) The Government shall defend, or have an employing contractor defend, any contractor protective force officer if a claim or legal action is brought against the officer as a result of that officer's conduct when performing arrest duties within the scope of employment, as authorized by Section 161.k of the Atomic Energy Act, in a reasonable and justifiable manner. Standards for performance of arrest duties are set forth in 10 CFR Part 1047. The contractor shall inform each protective force officer of these provisions and obtain his or her agreement to such of these provisions as would apply to the individual officer's rights or obligations. The contractor shall obtain the protective force officer's acknowledgment and agreement to these provisions by obtaining the officer's signature on the Certification set forth in subparagraph (d). The contractor shall retain the signed statements for a period of three years after final payment under the contract.
- (1) The contractor shall give the Contracting Officer immediate notice in writing of any action or claim filed against a protective force officer employed by the contractor arising out of the protective force officer's conduct when performing arrest duties.
  - (2) Except as otherwise directed by the Contracting Officer in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor or the protective force officer with respect to such action or claim.
  - (3) To the extent not in conflict with any applicable policy of insurance, the contractor with the Contracting Officer's approval, may settle any such action or claim; shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the protective force officers' rights and claims (except those against the Government) arising out of any such action or claim against the protective force officer; and if required by the Contracting Officer, shall authorize a representative of the Government to settle or defend any such action or claim and to represent the protective force officer in, or to take charge of, any action.
    - (i) If the settlement or defense of an action or claim against the protective force officer is undertaken by the Government, the contractor and the officer shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
    - (ii) Where an action against a protective force officer is not covered by a policy of insurance, the contractor shall, with the approval of the Contracting Officer,



proceed with the defense of the action in good faith and, in such event, the resulting defense and settlement expenses shall be reimbursable under the contract, provided, however, that the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure through its own fault or negligence.

- (4) The Government shall reimburse the contractor for payment of any financial liability found against the contractor or for payment by the contractor of any financial liability found against any protective force officer individually if, in the judgment of DOE, that officer was performing arrest duties within the scope of employment in a reasonable and justifiable manner (see 10 CFR Part 1047). The contractor shall advise protective force officers of the appropriate procedure(s) for obtaining contractor payments for any such financial liability judgment found against the officer.
- (b) Contractor expenses incurred for the defense and settlement of a legal action and/or financial liability payments made pursuant to (a)(3)(ii) and (a)(4) above shall be reimbursed as allowable costs under the contract. DOE's liability under this provision shall be limited to the amount of funds obligated under the contract. Where necessary, as determined by the Contracting Officer, the amount obligated for the contract will be appropriately revised, subject to the availability of appropriated funds for such costs.

(End of Clause)

#### **H.21 DISPLACED EMPLOYEE HIRING PREFERENCE (FEB 1998)**

- (a) Consistent with the Department of Energy Planning Guidance for Contractor Work Force Restructuring as supplemented by the current Department of Energy Oak Ridge Operations Work Force Restructuring Plan, the Contractor (including any teaming partners /subcontractors and joint venture members) shall provide to the extent practicable a preference in hiring to eligible terminated Contractor employees for work to be performed under this contract whenever filling vacant positions for external hiring.
- (b) The Contractor (including any teaming partners and/or subcontractors and joint venture members) shall utilize the Department of Energy Job Opportunity Bulletin Board System and the Lockheed Martin Career Center whenever filling vacant positions on the contract through external hiring.

(End of Clause)

#### **H.22 IMPLEMENTATION OF DOE DIRECTIVES (DEC 1998)**

In addition to the DOE Safeguards and Security directives identified in Section J, Attachment D, the contractor shall comply with all other DOE and Oak Ridge Operations and NNSA Y-12 Site Office standards, orders and other directives necessary in performing the statement of work.

(End of Clause)

#### **H.23 ORO H70 KEY PERSONNEL (MAY 1997)**

The personnel specified below are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. The Contracting Officer is to be notified reasonably in advance of diverting of, or substitution for, any of these individuals. That period of time shall not be less than thirty (30) days. No diversion shall be made by the Contractor without the written consent of the Contracting Officer, provided that the



Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

<u>Name</u>	<u>Title</u>
O. Lynn Calvert	General Manager
Jean (John) F. Burleson	Deputy General Manager
James L. Brown	Director, Environmental, Safety & Health & Quality
Steven C. Gibbs	Director, Protective Forces
James Rackstraw	Director, Training and Emergency Management
Robert A. Swing	Director, Information and Personnel Security
Laura B. Thomas	Director, Information Security
Lee G. Brooks, Jr.	Assistant General Manager for Administration

[End of Clause]

#### H.24 EQUIVALENT BASE PAY AND BENEFITS (MAY 1999)

The Contractor (including any teaming partners and/or subcontractors and joint venture members as applicable) shall provide equivalent base pay and employee benefits, including credit for company service with the current Contractor, to the transitioned work force it employs. The Employee Benefits listed at the end of this paragraph are the benefits the Contractor (including any teaming partners and/or subcontractors and joint venture members as applicable) shall include as part of the basis for its equivalent benefits package. In providing an equivalent benefit package, the Contractor shall certify that the proposed package is equivalent in total to the predecessor's employee benefit package. All benefits accrued and earned by the current employees on the date of transition to the Contractor (including any teaming partners/subcontractors and joint venture members), shall become "initial balances" for such employees who accept employment with the replacement Contractor (including any teaming partners and/or subcontractors and joint venture members as applicable).

Employee benefits include Defined Benefits and Other Benefits listed below:

<u>Defined Benefits</u>	<u>Other Benefits</u>
Medical	Vacation Plan
Dental	Hours of Work
Employee Assistance Program	Holidays and Holiday Pay
Flexible Spending Accounts	Civic Leave
Short Term Disability	Absence for Voting
Long Term Disability	Jury Duty
Basic and Supplemental Life Insurance	Family Medical Leave Act
Business Travel & Accident Insurance	Personal Leave
Special Accident Insurance	Leave of Absence
Savings Program	Short Term Disability (non-occupational and occupational)
Pension Plan	Military Training and Emergency Duty
Severance Plan	Military Service Plan
LMES Retiree Program Plan	Funeral Leave

Pension Plan: The Contractor (including any teaming partners/subcontractors and joint venture members) shall either establish a separate "mirror" defined benefit pension plan (including companion retiree medical benefits), reflecting the current Lockheed Martin Energy Systems (LMES) Defined Benefit Pension Plan, or make other arrangements acceptable to DOE, for all transitioned employees who are employed by the Contractor (including any teaming partners/subcontractors and joint venture members).

Severance Pay: No severance pay is warranted on the date incumbent employees transition

to a new contractor if there is substantial continuity of benefits. These employees will retain their severance pay benefit earned with the incumbent contractor and their predecessor contractors, plus any severance pay based on service with the new contractor, and will be paid applicable severance if an individual is ever subsequently involuntarily terminated (except for cause) by the new contractor. Severance pay benefits are not an allowable cost at the end of the term of the contract, including termination of the contract, if employees are employed by or receive an offer of employment with a replacement contractor or another DOE contractor with substantial continuity of benefits and credit for prior length of service are maintained.

**Collective Bargaining Agreements:** The Contractor shall recognize the existing collective bargaining agents for all hourly-paid guards, and either become signatory to the current collective bargaining agreements (CBAs), or shall negotiate successor CBAs. The Contractor shall bargain in good faith with the certified guard union locals, as the collective bargaining representatives for the work currently being performed by the current Contractors' bargaining unit guard employees, as a successor employer consistent with the National Labor Relations Act.

The Contractor (including any teaming partners and/or subcontractors and joint venture members) shall give due consideration to existing collective bargaining agreements between LMES and the Atomic Trades and Labor Council, and between Bechtel Jacobs Company, LLC (BJC) and Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-288, under which certain maintenance activities included in the Statement of Work, are currently being performed by the incumbent Contractors.

[End of Clause]

#### **H.25 FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI) (FEB 1999)**

The contractor (and any subcontractors/teaming offerors and joint venture members) shall be free from foreign ownership, control or influence pursuant to the provisions of DOE Acquisition Regulations Subpart 904.70.

[End of Clause]

#### **H.26 EMPLOYMENT RESTRICTION (JAN 1999)**

The protective force employees and Central Training Facility employees shall be employees of the prime contractor. This requirement pertains to all protective force employees and those Central Training employees involved in management, instructional development, firearms instruction, tactical instruction, safety, and any other employees determined by the offeror to be necessary to accomplish the training function. Clerical support and facility maintenance are excluded from this requirement.

[End of Clause]

#### **H.27 OFFICE ESTABLISHMENT (FEB 1999)**

The Contractor (including any teaming partners/subcontractors and joint venture members) shall establish an office in the local commuting area other than on the DOE sites/facilities.

[End of Clause]



**H.28 MINIMUM SUBCONTRACTING REQUIREMENT (JAN 1999)**

At least 14 percent of the contract requirement (exclusive of user fees) shall be performed by at least two firms from any combination of the following small business categories: Small Disadvantaged Business (which includes Woman-Owned firms) and 8(a)'s.

[End of Clause]

**H.29 CONVERSION OF CONTRACT TYPE**

To assure that DOE's goals with respect to the Protective Service Organization are met in the most cost effective manner, the Government reserves the right to convert this contract to another type determined by the Government to be in the Government's best interest. In doing so, the contractor shall enter into good faith negotiations with the Government to accomplish such conversion.

[End of Clause]

**H.30 CONTRACT ASSIGNMENT (JUL 2002)**

(a) The Contractor and DOE recognize that DOE may assign this contract to a DOE prime contractor to be administered as a subcontract. The terms and conditions of the contract will not be changed as a result of this assignment, other than as needed to change the parties.

(b) Any subcontract entered into pursuant to this assignment shall contain a provision to the effect that the subcontract may be terminated for the convenience of the prime contractor only in the event the DOE terminates the prime contract for the Government's convenience in whole or in part provided such partial termination relates to the work to be performed by Wackenhut Services, Inc. (WSI) under the subcontract or in the event such action (termination for convenience of WSI's efforts) is formally recommended to the prime by the Government. Notwithstanding the foregoing, a subcontract entered into pursuant to this clause may be terminated for the convenience of the prime contractor in whole or in part with WSI's consent.

[End of Clause]





## PART II - CONTRACT CLAUSES

### SECTION I

#### CONTRACT CLAUSES

**I.1 52.202-1 DEFINITIONS (OCT 1995) (As Modified by 952.202-1) (MAR 1985)**

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means—
  - (1) Any item other than real property, that is of a type customarily used for nongovernmental purposes and that—
    - (i) Has been sold, leased, or licensed to the general public; or
    - (ii) Has been offered for sale, lease, or license to the general public;
  - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
  - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—
    - (i) Modifications of a type customarily available in the commercial marketplace; or
    - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
  - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are a type customarily combined and sold in combination to the general public;
  - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services—
    - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
    - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
  - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

- (7) Any item, combination of items, or service referred to in subparagraph (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
- (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- (e) "Nondevelopmental item" means--
  - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
  - (2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
  - (3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.
- (h) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

[End of Clause]

**I.2 52.203-3 GRATUITIES (APR 1984)**

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
  - (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
  - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) above, the Government is entitled--
  - (1) To pursue the same remedies as in a breach of the contract; and
  - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

[End of Clause]

**I.3 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

[End of Clause]

**I.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

[End of Clause]

**I.5 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--
- (1) Providing or attempting to provide or offering to provide any kickback;
  - (2) Soliciting, accepting, or attempting to accept any kickback; or
  - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
- (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
- (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed the subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
- (5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

[End of Clause]



**IMPROPER ACTIVITY (JAN 1997)**

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--
- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
  - (2) Rescind the contract with respect to which--
    - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--
      - (A) Exchanging the information covered by such subsections for anything of value; or
      - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
    - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

[End of Clause]

**I.7 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be--
- (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
  - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
  - (3) For cost-plus-award-fee contracts--
    - (i) The base fee established in the contract at the time of contract award;
    - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
  - (4) For fixed-price-incentive contracts, the Government may--
    - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or



- (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

[End of Clause]

**I.8 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

**(a) Definitions.**

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
  - (i) Agency and legislative liaison by own employees.
  - (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation

made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

- (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
  - (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
    - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
    - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
  - (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action-
    - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
    - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
    - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
  - (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.
- (ii) Professional and technical services.
- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--
- (1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
  - (2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or any extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not



allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
  - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An

imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

[End of Clause]

**I.9 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)**

- (a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.
- (b) The 20 percent standard applies to high-speed copier paper, offset paper, forms, bond, computer printout paper, carbonless paper, file folders, white, woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

[End of Clause]

**I.10 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:
  - (1) The name of the subcontractor.
  - (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
  - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
  - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

[End of Clause]



I.11 52.215-2 AUDIT AND RECORDS--NEGOTIATION (AUG 1996)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—
  - (1) The proposal for the contract, subcontract, or modification;
  - (2) The discussions conducted on the proposal(s), including those related to negotiating;
  - (3) Pricing of the contract, subcontract, or modification; or
  - (4) Performance of the contract, subcontract or modification.
- (d) Comptroller General—(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
  - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating
  - (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and
  - (2) the data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—
  - (1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
  - (2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract and exceed the simplified acquisition threshold, and—
  - (1) That are cost-reimbursement, incentive, time-and materials, labor-hour, or price redeterminable type or any combination of these;
  - (2) For which costs or pricing data are required; or

- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

[End of Clause]

**I.12 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

[End of Clause]

**I.13 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA -- MODIFICATIONS (OCT 1997)**

- (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--
  - (1) The actual subcontract; or
  - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
  - (l) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

- (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
  - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
  - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—
- (1) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
  - (2) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
  - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
  - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

[End of Clause]

**I.14 52.215-13 SUBCONTRACTOR COST OR PRICING DATA-- MODIFICATIONS (OCT 1997)**

- (a) The requirements of paragraphs (b) and (c) of this clause shall—
  - (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
  - (2) Be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

- (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

[End of Clause]

**I.15 52.215-15 TERMINATION OF DEFINED BENEFIT PENSION PLANS (OCT 1997)**

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

[End of Clause]

**I.16 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)**

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

[End of Clause]

**I.17 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)**

- (a) The Contractor shall make the following notifications in writing:
  - (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
  - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall—
  - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) Provide the ACO or designated representative ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
  - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.



- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

[End of Clause]

**I.18 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)**

**(a) Exceptions from cost or pricing data.**

- (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

- (ii) Information on modifications of contracts or subcontracts for commercial items.

- If--
1. The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and
  2. The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

- (2) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

- (a) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
- (b) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
- (c) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

- (3) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent



records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

- (4) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:
- (a) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
  - (b) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

[End of Clause]

**I.19 52.217-8 OPTION TO EXTEND SERVICES (AUG 1989)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

[End of Clause]

**I.20 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 1989)**

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option provision.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 63 months.

[End of Clause]

**I.21 52.219-8 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS (JUN 1997)**

- (1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the term of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

- (2) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (3) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.
- (4) The term "small business concern owned and controlled by women" shall mean a small business concern (1) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women; and
- (5) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

[End of Clause]

**I.22 52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1998)**

- (a) This clause does not apply to small business concerns.
- (b) Definitions. As used in this clause--

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the Offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the

Offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

- (c) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the Offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.
- (d) The Offeror's subcontracting plan shall include the following:
  - (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
  - (2) A statement of—
    - (i) Total dollars planned to be subcontracted for an individual contract plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
    - (ii) Total dollars planned to be subcontracted to small business concerns; and
    - (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
    - (iv) Total dollars planned to be subcontracted to women-owned small business concerns.
  - (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) small disadvantaged business concerns and (iii) women-owned small business concerns.
  - (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
  - (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.
  - (6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the



- proportionate share of indirect costs to be incurred with (i) small business concerns, (ii) small disadvantaged business concerns, and (iii) women-owned small business concerns.
- (7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the Offeror will make to assure that small, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the Offeror will include the clause in this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the Offeror will—
- (i) Cooperate in any studies or surveys as may be required;
  - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;
  - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and
  - (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., PASS), guides, and other data that identify small, small disadvantaged and women-owned small business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged or women-owned small business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, and (C) whether women-owned small business concerns were solicited and if not, why not, and (D) if applicable, the reason award was not made to a small business concern.
  - (iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged and women-owned small business sources.
  - (v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.
  - (vi) On a contract-by-contract basis, records to support award data submitted by the Offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

- (1) Assist small, small disadvantaged and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small, small disadvantaged and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- (2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged and women-owned small business concerns in all "make-or-buy" decisions.
- (3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.
- (4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided—
  - (1) the master plan has been approved;
  - (2) the Offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
  - (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the Offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- (h) Prior compliance of the Offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the Offeror for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of contract.

[End of Clause]

**I.23 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN (AUG 1998)**

- (a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan.



If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

[End of Clause]

**I.24 52.219-23 NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (OCT 1998) Alternate I (OCT 1998)**

**(a) Definitions.** As used in this clause—

"Small disadvantaged business concern" means an Offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

- (1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and
  - (i) No material change in disadvantaged ownership and control has occurred since its certification;
  - (ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
  - (iii) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration;
- (2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an Offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or
- (3) Is a joint venture as defined in 13 CFR 124.1002(f).

"Historically Black College or University" means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority Institution" means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for purposes of this clause, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

"United States" means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, and the District of Columbia.

(b) Evaluation adjustment.

- (1) Offers will be evaluated by adding a factor of ten percent to the price of all offers, except—
  - (i) Offers from small disadvantaged business concerns that have not waived the adjustment;
  - (ii) For DoD, NASA, and Coast Guard acquisitions, otherwise successful offers from Historically Black Colleges or Universities or Minority Institutions;
  - (iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see section 25.402 of the Federal Acquisition Regulation (FAR));
  - (iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government; and
  - (v) For DoD acquisitions, otherwise successful offers of qualifying country end products (see sections 225.000-70 and 252.225-7001 of the Defense FAR Supplement).
- (2) The factor shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

- (c) Waiver of evaluation adjustment. A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

\_\_\_\_\_ Offeror elects to waive the adjustment.

(d) Agreements

- (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—
  - (i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;
  - (ii) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;
  - (iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or
  - (iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

- (2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

[End of Clause]

**I.25 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

[End of Clause]

**I.26 52.222-3 CONVICT LABOR (AUG 1996)**

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a) (1) The worker is paid or is in an approved work training program on a voluntary basis;
- (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
- (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

[End of Clause]

**I.27 52.222-26 EQUAL OPPORTUNITY (APR 1984)**

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.



- (b) During performing this contract, the Contractor agrees as follows:
- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
  - (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
  - (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
  - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  - (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
  - (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
  - (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
  - (8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.
  - (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
  - (10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
  - (11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

[End of Clause]

**I.28 52.222-28 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)**

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

[End of Clause]

**I.29 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

**(a) Definitions.** As used in this clause--

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system," means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era means a person who--

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

**(b) General.**

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as --

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and



- (viii) Selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.
- (c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
  - (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.
  - (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
  - (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (d) Applicability. (1) This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
  - (2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.
- (e) Postings. (1) The Contractor agrees to post employment notices stating
  - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and
  - (ii) The rights of applicants and employees.
  - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.
  - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

- (f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

[End of Clause]

**I.30 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as-
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
  - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Contractor agrees to post employment notices stating –
  - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
  - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

[End of Clause]

**I.31 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
  - (1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and
  - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:
  - (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or
  - (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

[End of Clause]



I.32 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

- (a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service Employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

- (b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.
- (c) Compensation. (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.
- (2) (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).
- (ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.
- (iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.
- (iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General

Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

- (B) In the case of a contract modification an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.
- (C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.
- (vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) **Adjustments of Compensation.** If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) **Obligation to Furnish Fringe Benefits.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.
- (e) **Minimum Wage.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
- (f) **Successor Contracts.** If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under



this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- (h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
- (i) Records.
  - (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
    - (i) For each employee subject to the Act—
      - (A) Name and address and social security number;
      - (B) Correct wage classification or classifications, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation.
      - (C) Daily and weekly hours worked by each employee; and
      - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
    - (ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested

parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (C)(2)(ii) of this clause will fulfill this requirement.

- (iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.
- (2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
- (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
- (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (k) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.
- (m) Collective Bargaining Agreements Applicable to Service Employee. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) Seniority List. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173) the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names, of all service employees on the Contractor's or subcontractor's

payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

- (o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.
- (p) Contractor's Certification. (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.
  - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
  - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to this amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.
  - (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
  - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
  - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.
- (r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- (s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited



by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
  - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
  - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
  - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

[End of Clause]

**I.33 52.223-2 CLEAN AIR AND WATER (APR 1984)**

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this clause, means—

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- (4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency (EPA) or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with—

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency (EPA), or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.



"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA), determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees--

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when the contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

[End of Clause]

**I.34 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JUL 1995)**

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The Offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert  
NONE)

\_\_\_\_\_ Identification  
No. \_\_\_\_\_

- (c) The apparently successful Offeror, by acceptance of the contract, certifies that the list in paragraph (b) of this clause is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful Offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in

the apparently successful Offeror being considered nonresponsible and ineligible for award.

- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause or the certification submitted under paragraph (c) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
  - (1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to--
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (ii) Obtain medical treatment for those affected by the material; and
    - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
- (3) The Government is not precluded from using similar or identical data acquired from other sources.
  - (i) Except as provided in paragraph (i)(2) the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
    - (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
    - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

[End of Clause]

**I.35 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)**

- (a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

- (b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Data Safety Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

[End of Clause]

**I.36 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)**

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—
- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
  - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
  - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
  - (4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR 19.102 of the Federal Acquisition Regulation (FAR); or
  - (5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—
- (1) The Contractor shall notify the Contracting Officer; and
  - (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—
- (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

- (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

[End of Clause]

**I.37 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

[End of Clause]

**I.38 52.224-2 PRIVACY ACT (APR 1984)**

(a) The Contractor agrees to—

- (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—
  - (i) The systems of records; and
  - (ii) The design, development, or operation work that the contractor is to perform;
- (2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
- (3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

- (c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
- (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
- (3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

[End of Clause]



**I.39 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (AUG 1998)**

- (a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive Order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea and Sudan.
- (b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.
- (c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

[End of Clause]

**I.40 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)**

- (a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold; however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

[End of Clause]

**I.41 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)**

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts

and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

[End of Clause]

**I.42 52.227-3 PATENT INDEMNITY (APR 1984)**

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

[End of Clause]

**I.43 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**

Except for data contained on pages \_\_\_\_\_, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the Rights in Data-General clause contained in this contract) in and to the technical data contained in the proposal dated \_\_\_\_\_, upon which this contract is based.

[End of Clause]

**I.44 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)**

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
- (1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

- (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
- (4)
  - (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.
  - (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
  - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
- (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.
- (6) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR Part 9904 or a CAS rule or regulation in 48 CFR Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (7) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (8) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a



business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

[End of Clause]

**I.45 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

- (a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

- (1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
- (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
- (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):
  - (i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
  - (ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

- (b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

- (1) Cost impact proposals submitted for changes in cost accounting practices required in



- accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraphs (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards—Educational Institution, which have an award date before the effective date of that standard or cost principle.
- (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards—Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards—Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.
- (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards—Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.
- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
- (e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—
- (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and
  - (2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:
    - (i) Subcontractor's name and subcontract number.
    - (ii) Dollar amount and date of award.
    - (iii) Name of Contractor making the award.
    - (iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230-2, 52.230-3, or 52.230-5, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.
- (g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

[End of Clause]

**I.46 52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS  
(FEB 1997)**

The Government shall pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

**(a) Hourly rate.**

- (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) of this section, pay the voucher as approved by the Contracting Officer.
- (2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this section.
- (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

**(b) Materials and subcontracts.**

- (1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The Contractor shall be reimbursed for items and services

purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

- (2) The cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause; provided, that the costs are consistent with subparagraph (b)(3) of this section. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (a)(1) of this section.
- (3) To the extent able, the Contractor shall—
  - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
  - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.
- (c) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.
- (d) Ceiling price. The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.



- (e) Audit. At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) of this section), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.
- (f) Assignment. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:
- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
  - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.
  - (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.
- (g) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

[End of Clause]

**I.47 52.232-17 INTEREST (JUN 1996)**

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this



clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

- (b) Amounts shall be due at the earliest of the following dates:
- (1) The date fixed under this contract.
  - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
  - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
  - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

[End of Clause]

**I.48 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

[End of Clause]

**I.49 52.232-25 PROMPT PAYMENT (JUN 1997)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

**(a) Invoice payments**

**(1) Due Date.**

- (i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

- (A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).
  - (B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.
  - (ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.
- (2) Certain food products and other payments.
- (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—
    - (A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.
    - (B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.
    - (C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.
    - (D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.
  - (ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.
- (3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraph (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

- (i) Name and address of the Contractor.
  - (ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)
  - (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
  - (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
  - (v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
  - (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
  - (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.
  - (viii) Any other information or documentation required by the contract (such as evidence of shipment).
  - (ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.
- (4) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.
- (i) A proper invoice was received by the designated billing office.
  - (ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
  - (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
- (5) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

- (i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.
- (ii) The following periods of time will not be included in the determination of an interest penalty:
  - (A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).
  - (B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.
  - (C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.
- (iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.
- (iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.
- (6) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.
- (7) Additional interest penalty.
  - (i) A penalty amount, calculated in accordance with paragraph (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--
    - (A) Is owed an interest penalty of \$1 or more;
    - (B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and
    - (C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.
  - (ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--



- (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
  - (2) Attach a copy of the invoice on which the unpaid late payment interest was due; and
  - (3) State that payment of the principal has been received, including the date of receipt.
- (B) Demands must be postmarked on or before the 40th day after payment was made, except that--
- (1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or
  - (2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.
- (iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except--
- (1) The additional penalty shall not exceed \$5,000;
  - (2) The additional penalty shall never be less than \$25; and
  - (3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.
- (B) If the interest penalty ceases to accrue in accordance with the limits stated in paragraph (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in paragraph (a)(7)(iii)(A) of this clause.
- (C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.
- (D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).
- (b) Contract financing payments--
- (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.
  - (2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing

requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

- (3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.
- (c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

[End of Clause]

**I.50 52.232-33 MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1996)**

- (a) Method of payment. Payments by the Government under this contract, including invoice and contract financing payments, may be made by check or electronic funds transfer (EFT) at the option of the Government. If payment is made by EFT, the Government may, at its option, also forward the associated payment information by electronic transfer. As used in this clause, the term "EFT" refers to the funds transfer and may also include the information transfer.
- (b) Mandatory submission of Contractor's EFT information.
  - (1) The Contractor is required, as a condition to any payment under this contract, to provide the Government with the information required to make payment by EFT as described in paragraph (d) of this clause, unless the payment office determines that submission of the information is not required. However, until January 1, 1999, in the event the Contractor certifies in writing to the payment office that the Contractor does not have an account with a financial institution or an authorized payment agent, payment shall be made by other than EFT. For any payments to be made after January 1, 1999, the Contractor shall provide EFT information as described in paragraph (d) of this clause.
  - (2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the payment office.
- (c) Contractor's EFT information. Prior to submission of the first request for payment (whether for invoice or contract financing payment) under this contract, the Contractor shall provide the information required to make contract payment by EFT, as described in paragraph (d) of this clause, directly to the Government payment office named in this contract. If more than one payment office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the changed information to the designated payment office(s).
- (d) Required EFT information. The Government may make payment by EFT through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System at the Government's option. The Contractor shall provide the following information for both methods in a form acceptable to the designated payment office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause).
  - (1) The contract number to which this notice applies.
  - (2) The Contractor's name and remittance address, as stated in the contract, and account number at the Contractor's financial agent.
  - (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) For ACH payments only:

- (i) Name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
- (ii) Contractor's account number and the type of account (checking, saving, or lockbox).

(5) For Federal Reserve Wire Transfer System payments only:

- (i) Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for the Contractor's financial agent.
- (ii) If the Contractor's financial agent is not directly on-line to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, the Contractor shall also provide the name, address, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(e) Suspension of payment.

- (1) Notwithstanding the provisions of any other clause of this contract, the Government is not required to make any payment under this contract until after receipt, by the designated payment office, of the correct EFT payment information from the Contractor or a certificate submitted in accordance with paragraph (b) of this clause. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the Prompt Payment clause of this contract.
- (2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment clause of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) Contractor EFT arrangements. The Contractor shall designate a single financial agent capable of receiving and processing the electronic funds transfer using the EFT methods described in paragraph (d) of this clause. The Contractor shall pay all fees and charges for receipt and processing of transfers.

(g) Liability for uncompleted or erroneous transfers.

- (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor-provided EFT information in the correct manner, the Government remains responsible for (i) making a correct payment, (ii) paying any prompt payment penalty due, and (iii) recovering any erroneously directed funds.
- (2) If an uncompleted or erroneous transfer occurs because Contractor-provided EFT information was incorrect at the time of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—
  - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
  - (ii) If the funds remain under the control of the payment office, the Government retains the right to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause

(h) EFT and prompt payment.

- (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of this contract if, in the EFT payment transaction



instruction given to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

- (2) When payment cannot be made by EFT because of incorrect EFT information provided by the Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to the Contractor within 7 days after the Government is notified of the defective EFT information.
  - (i) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the Assignment of Claims clause of this contract, the assignee shall provide the assignee EFT information required by paragraph (d) of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information which shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.
- (j) Payment office discretion. If the Contractor does not wish to receive payment by EFT methods for one or more payments, the Contractor may submit a request to the designated payment office to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request is solely that of the Government.
- (k) Change of EFT information by financial agent. The Contractor agrees that the Contractor's financial agent may notify the Government of a change to the routing transit number, Contractor account number, or account type. The Government shall use the changed data in accordance with paragraph (e)(2) of this clause. The Contractor agrees that the information provided by the agent is deemed to be correct information as if it were provided by the Contractor. The Contractor agrees that the agent's notice of changed EFT data is deemed to be a request by the Contractor in accordance with paragraph (e)(2) that no further payments be made until the changed EFT information is implemented by the payment office.

[End of Clause]

**I.51 52.233-1 DISPUTES (OCT 1995) ALTERNATE I (DEC 1991)**

- (a) This contract is subject to the Contracts Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or related to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting



Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

- (2) (i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim:

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using:

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

- (iii) The certification shall state as follows:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

[End of Clause]

**I.52 52.233-3 PROTEST AFTER AWARD (AUG 1996)**

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
  - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the request at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

[End of Clause]

**I.53 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

[End of Clause]

**I.54 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

- (a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

[End of Clause]

**I.55 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)**

- (a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.
- (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

[End of Clause]

**I.56 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)**

- (a) Definition. Proposal, as used in this clause, means either—
  - (1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—
    - (i) Relates to any payment made on the basis of billing rates; or
    - (ii) Will be used in negotiating the final contract price; or

- (2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.
- (b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).
- (c) The Contractor shall include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—
  - (1) The amount of the disallowed cost allocated to this contract; plus
  - (2) Simple interest, to be computed—
    - (i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
    - (ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).
- (g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.
- (h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

[End of Clause]

**I.57 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)**

- (a) The Contractor shall—
  - (1) Certify any proposal to establish or modify final indirect cost rates;
  - (2) Use the format in paragraph (c) of this clause to certify; and
  - (3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.
- (b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.
- (c) The certificate of final indirect costs shall read as follows:

**CERTIFICATE OF FINAL INDIRECT COSTS**

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:



1. All costs included in this proposal (identify proposal and date) to establish final indirect costs rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and
2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

[End of Clause]

**I.58 52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

[End of Clause]

**I.59 52.243-3 CHANGES--TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987)**

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
  - (1) Drawings, designs, or specifications.
  - (2) Method of shipment or packing.
  - (3) Place of delivery.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) ceiling price, (2) hourly rates, (3) delivery schedule, and (4) other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

[End of Clause]

**I.60 52.244-2 SUBCONTRACTS (AUG 1998)**

(a) Definitions. As used in this clause—

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

cost-reimbursement, time and materials, or labor hour type that exceed 5 percent of the total contract ceiling price.

(f) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

- (vii) A negotiation memorandum reflecting--
- (A) The principal elements of the subcontract price negotiations;
  - (B) The most significant considerations controlling establishment of initial or revised prices;
  - (C) The reason cost or pricing data were or were not required;
  - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
  - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
  - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
  - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.
- (g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--
- (1) Of the acceptability of any subcontract terms or conditions;
  - (2) Of the allowability of any cost under this contract; or
  - (3) To relieve the Contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

[End of Clause]

**I.61 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (APR 1998)**

(a) Definition.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

[End of Clause]

**I.62 52.246-25 LIMITATION OF LIABILITY--SERVICES (FEB 1997)**

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall



be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

[End of Clause]

**I.63 52.249-6 TERMINATION (COST-REIMBURSEMENT) (SEP 1996) ALTERNATE IV (SEP 1996)**

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—
  - (1) The Contracting Officer determines that a termination is in the Government's interest; or
  - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
  - (7) Complete performance of the work not terminated.

- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay the amount determined as follows:
  - (1) If the termination is for the convenience of the Government, include--
    - (i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;
    - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;
    - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting

Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

- (iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
- (v) The reasonable costs of settlement of the work terminated, including--
  - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (C) Storage, transportation, and other costs incurred, reasonably necessary for the protection, or disposition of the termination inventory.
- (2) If the termination is for default of the Contractor, include the amounts computed under subparagraph (h)(1) of this clause but omit--
  - (i) Any amount for preparation of the Contractor's termination settlement proposal; and
  - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.
- (l) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted--
  - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
  - (2) Any claim which the Government has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest

computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

[End of Clause]

**I.64 52.249-14 EXCUSABLE DELAYS (APR 1984)**

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (f) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargos, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--
- (1) The subcontracted supplies or services were obtainable from other sources;
  - (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
  - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

[End of Clause]

**I.65 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

[End of Clause]



**I.66 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)**

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

[End of Clause]

**I.67 52.245-5 GOVERNMENT PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986) (As Modified by 952.245-5)**

(a) Government-furnished property.

- (1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—
  - (i) All or substantially all of the Contractor's business;
  - (ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or
  - (iii) A separate and complete major industrial operation connected with performing this contract.
- (2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
- (3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.
- (4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

- (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.
- (2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any—
  - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
  - (ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) Title.

- (1) The Government shall retain title to all Government-furnished property.
- (2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.
- (3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—
  - (i) Issuance of the property for use in contract performance;
  - (ii) Commencement of processing of the property or use in contract performance; or
  - (iii) Reimbursement of the cost of the property by the Government, whichever occurs first.
- (4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government property.

The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration.

- (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5 as in effect on the date of this contract.
- (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5.
- (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer shall make equitable adjustment in accordance with paragraph (h) of this clause.

(f) Access.

The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited risk of loss.

- (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
- (2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—
  - (i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
  - (ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
  - (iii) For which the Contractor is otherwise responsible under the express terms of this contract;
  - (iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
  - (v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.
- (3)
  - (i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.
  - (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—
    - (A) Did not result from the Contractor's failure to maintain an approved program or system; or
    - (B) Occurred while an approved program or system was maintained by the Contractor.
- (4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.
- (5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to



protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

- (i) The lost, destroyed, or damaged Government property;
  - (ii) The time and origin of the loss, destruction, or damage;
  - (iii) All known interests in commingled property of which the Government property is a part; and
  - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.
- (7) The Contractor shall not be reimbursed for, and shall not include as an item of over head, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.
- (8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.
- (9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.
- (h) Equitable adjustment.

When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.



- (i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

- (j) Abandonment and restoration of Contractor premises.

Unless otherwise provided herein, the Government--

- (1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, when the equitable adjustment made under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

- (k) Communications.

All communications under this clause shall be in writing.

- (l) Overseas contracts. If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

[End of Clause]

**I.68 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

[End of Clause]

**I.69 952.204-2 SECURITY (SEP 1997)**

- (a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of

work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

- (b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means:
  - (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or
  - (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).
- (j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

[End of Clause]

**I.70 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)**

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/ declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Classifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

[End of Clause]

**I.71 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)**

(a) For purposes of this clause, a foreign interest is defined as any of the following:

- (1) A foreign government or foreign government agency;
- (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
- (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or
- (4) Any person who is not a U.S. citizen.



- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.
- (c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (d) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.
- (e) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the contracting officer shall consider proposals made by the contractor to avoid or mitigate foreign influences.
- (f) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
- (g) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.
- (h) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (i) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.
- (j) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

[End of Clause]

**I.72 952.208-70 PRINTING (APR 1984)**

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of single unit, or not more than 25,000 units in the aggregate of multiple units, will not be



deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

- (1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Officer (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.
- (3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.
- (4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

[End of Clause]

**I.73 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (JUN 1996)**

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed to fill this contract.

[End of Clause]

**I.74 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (JAN 1993) (As Modified by 952-222-70)**

- (a) The contractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR part 708 with respect to work performed on-site at a DOE-owned or leased facility, as provided for at part 708.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, with respect to work performed on-site at a DOE-owned or leased facility, as provided at 10 CFR 708.

[End of Clause]

**I.75 952.223-71 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)**

- (a) For the purposes of this clause,
  - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
  - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
  - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
- (1) Define the scope of work;
  - (2) Identify and analyze hazards associated with the work;
  - (3) Develop and implement hazard controls;
  - (4) Perform work within controls; and
  - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall

cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) The contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.
- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may require that the subcontractor submit a Safety Management System for the contractor's review and approval.

[End of Clause]

**I.76 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)**

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

[End of Clause]

**I.77 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)**

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

[End of Clause]

**I.78 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)**

**(a) Definition.**

"Eligible employee" means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

[End of Clause]

**I.79 952.237-70 COLLECTIVE BARGAINING AGREEMENTS--PROTECTIVE SERVICES (AUG 1993)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide the grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services.

[End of Clause]



## PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

### SECTION J

#### LIST OF ATTACHMENTS

##### J.1 ORO J01 LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS (MAY 1997)

<u>Attachment</u>	<u>Description</u>
[A]	Statement of Work
[B]	Reporting Requirements Checklist
[C]	List of Government-Furnished Property
[D]	List of DOE Orders and Manuals
[E]	Department of Labor Wage Determination

[End of Clause]

##### J.2 ORO J10 REPORT DISTRIBUTION ADDRESSEE LIST (MAY 1997)

Unless otherwise required, the contractor shall provide contract deliverables to the following:

- A. U.S. Department of Energy  
NNSA Y-12 Site Office  
ATTN: Donat St. Pierre, COR  
P.O. Box 2001  
Oak Ridge, Tennessee 37831
- B. U.S. Department of Energy  
NNSA Y-12 Site Office  
ATTN: William Wistrom, Contracting Officer  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

(End of Clause)

##### J.3 ORO J15 UNIFORM REPORTING SYSTEM (MAY 1997)

DOE Order 1332.1A establishes the Department of Energy uniform reporting system for contracts and provides implementing formats, forms, instructions, and procedures for information that is essential for effective management. A copy of DOE Order 1332.1A is available at [http://www.ornl.gov/doe\\_oro\\_dmg/orchklst.htm](http://www.ornl.gov/doe_oro_dmg/orchklst.htm).